

**BEFORE THE  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580**

In the Matter of

Prerecorded Message EBR Telemarketing                      )                      Project No. R411001

**COMMENTS OF VOICE MAIL BROADCASTING CORPORATION**

William B. Baker  
John F. Kamp  
WILEY REIN & FIELDING, LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 719-7255

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VMBC believes itself to be the nation's largest provider of customer-centric voice mail broadcast services, measured by the number of messages delivered. Since 1997, VMBC has

delivered millions of targeted and relevant prerecorded messages to the voice mail machines of their customers and to actual customers when they answer live.<sup>2</sup> VMBC delivered these prerecorded messages on behalf of customer-centric clients who have concluded that these messages represent a valuable communication method to nurture the customer relationship and enhance their customer loyalty.

Examples of voice messaging range from reminding residential customers of an upcoming event or a repair or delivery appointment to alerts about a late payment or a cancelled flight. Medical and other professionals may call to remind a patient/client that it is time to schedule an appointment. A cable company might call to confirm an installation or to notify about a late payment. Other messages might remind holders of a retailer's credit card of an upcoming customer appreciation event for which cardholders receive special discounts.

VMBC's prerecorded voice-mail broadcast messages have proven valuable in a broad range of industries and applications. VMBC's clients have proven, through detailed analyses of customer feedback covering thousands of campaigns and millions of consumers, that the vast majority of consumers appreciate relevant prerecorded verbal invitations and reminders, and that it is easy to identify and prevent delivering prerecorded messages to those who do not.

VMBC's clients have included political campaigns, non-profit organizations, and commercial enterprises—including numerous Fortune 500 companies. VMBC has always required its commercial enterprise clients to have an established business relationship or prior authorization to deliver telemarketing messages to consumers. Over the years, VMBC has

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<sup>1</sup> 69 *Fed. Reg.* 67287 (Nov. 17, 2004) ("*Notice*").

<sup>2</sup> However, the conflict between the TSR's call abandonment provision and the FCC's TCPA regulations regarding prerecorded messages has caused many firms to put their voice mail messaging programs on hold indefinitely. This has had a very detrimental effect on VMBC's business.

delivered prerecorded reminder and invitation messages on behalf of retailers, financial service institutions, medical services providers, delivery and repair companies, utilities, schools, and other organizations to customers with which they have “established business relationships” or express consent as defined by this Commission and by the Federal Communications Commission in its regulations implementing the Telephone Consumer Protection Act of 1991.<sup>3</sup>

VMBC has prepared examples of voice mail messaging for consideration by the Commission. Attachment A to these comments is a document prepared by VMBC entitled “Interactive Voice Message Demonstrations.” Included therein are instructions for accessing six example voice messages via toll free numbers maintained by VMBC. Although these examples differ from actual voice mail messaging because, in these instances, the “customer” places the calls, the recordings represent typical voice mail messages that one would receive at home.

## **B. The Conflict Between FTC and FCC Rules**

Unfortunately, as the *Notice* summarizes, the 2003 amendments to the TSR inadvertently created a conflict between the FCC’s TCPA regulations and the TSR. Under the FCC’s TCPA regulations, prerecorded messages placed using an automated dialing machine/predictive dialer to residential consumers are allowed where such calls are placed to persons with whom there is an “established business relationship.” 47 C.F.R. §64.1200(a)(2)(iv).<sup>4</sup> That same “EBR” exemption also operates as an exemption to the FCC’s general restrictions on abandoned calls.<sup>5</sup>

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<sup>3</sup> 47 U.S.C. §227. The FCC’s TCPA regulations appear at 47 C.F.R. §64.1200 *et seq.*

<sup>4</sup> This is an exemption from the general prohibition against prerecorded voice messages to residential customers under the FCC’s TCPA regulations.

<sup>5</sup> Under the FCC rules, information in the prerecorded message (beyond name, telephone number, and that the call is for telemarketing purposes) would constitute an unlawful “unsolicited advertisement” (if not exempt under 47 C.F.R. §64.1200(a)(2). 47 C.F.R. §64.1200(a)(6) & (6)(ii); *Rules and Regulations Implementing the Telephone Consumer*

However, as the *Notice* recognizes, interstate voice mail messaging effectively is prohibited by the call abandonment amendments to the Telemarketing Sales Rule. The Commission's Statement of Basis and Purpose amending the TSR, addressing the call abandonment "safe harbor," states:

*Clearly, telemarketers cannot avoid liability by connecting calls to a recorded solicitation message rather than a sales representative. The Rule distinguishes between calls handled by a sales representative and those handled by an automated dialing-announcing device. The Rule specifies that telemarketers must connect calls to a sales representative rather than a recorded message.*

68 *Fed. Reg.* 4414, 4644 (January 29, 2003) (emphasis supplied; footnotes omitted). By definition, voice mail messaging would not comply with this rule. Accordingly, a conflict exists between the FCC's TCPA rules, which allow both interstate and intrastate voice mail messaging where an established business relationship exists, and the TSR, which prohibits voice mail messaging as abandoned calls when made on an interstate basis.

Both the FCC's *Report on Regulatory Coordination*<sup>6</sup> and the FTC's *Report to Congress Pursuant to the Do Not Call Implementation Act on Regulatory Coordination in Federal Telemarketing Laws*<sup>7</sup> recognize this inconsistency. As the FCC's Report states (at ¶24):

The FCC's rules expressly permit telemarketers to send prerecorded messages to customers with whom they have an established business relationship or who have given their express consent to receive such calls. The FTC's rules prohibit such messages as abandoned calls. Telemarketers who deliver such

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*Protection Act of 1991*, FCC 03-153, ¶155 (July 3, 2003) (Report and Order). However, that provision exempts calls where an established business relationship exists.

<sup>6</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, DA-03-2855 (released Sept. 8, 2003) (Report on Regulatory Coordination).

<sup>7</sup> *Report to Congress Pursuant to the Do Not Call Implementation Act on Regulatory Coordination in Federal Telemarketing Laws Submitted by The Federal Trade Commission* (Sept. 9, 2003).

messages lawfully under the FCC rules could be in violation of the FTC's call abandonment rules.

Accordingly, providers of interstate voice mail messaging face a situation in which their service is lawful under FCC regulations but could violate the FTC's TSR. This presents an unacceptable risk to both the providers of the service and the businesses that have used voice mail messaging in the past to reach their customers.

VMBC supports the Commission's proposal in the *Notice* to amend the TSR to permit voice mail messaging. Under the Commission's proposal, the existing "safe harbor" for compliance with the TSR's call abandonment rules would be amended to allow voice mail messaging, subject to certain conditions set forth in the *Notice*. VMBC supports that proposal, as elaborated herein.

## **II. THE TSR SHOULD BE AMENDED TO ALLOW PRERECORDED MESSAGES TO CUSTOMERS WHERE AN ESTABLISHED BUSINESS RELATIONSHIP EXISTS**

The change proposed by the *Notice* is small. Today, telemarketing calls by live sales representatives to customers with whom the clients have an established business relationship are lawful, albeit regulated. The proposed amendment merely would allow such calls by prerecorded messages instead of live sales representatives. However, because voice mail messaging is a targeted form of communication that is almost uniquely well-suited for customer-centric, consistent, focused messages, amending the TSR as proposed by the *Notice* would benefit both consumers and businesses, and would have broad public interest benefits.

### **A. Amending The TSR To Permit Customer-Centric Voice Mail Messaging Would Benefit The Public Interest**

Allowing prerecorded voice mail messages would benefit both consumers and businesses. Consumers would receive higher quality information. Businesses would see



enhanced brand image and increased customer retention. The more cost-effective technology would boost domestic jobs. And voice mail messaging not only protects consumer privacy in ways not possible with live operators, but also can give consumers a straightforward, non-confrontational means of opting out of future calls.

#### **1. Consumers would benefit from the proposed change**

Prerecorded voice-mail broadcasting offers many customer benefits over a call by a live customer service representative. Most importantly, it enables consumers to receive a higher level of service, resulting in greater satisfaction. Voice mail messaging provides a means for consumers to receive informative, timely information in clear language. The information is delivered in a non-confrontational manner, with no opportunity for high-pressure sales methods.

That these prerecorded messages would be useful is illustrated by VMBC's experience during the period leading up to the recent amendments to the TSR. Both the response rates (as measured by the client businesses) and low opt-out rates indicate that such messages are well-received. Indeed, virtually every new client initially used voice mail messages on an experimental basis to ensure that existing customers respond favorably to this marketing technique. Based on hundreds of tests covering tens of millions of calls, VMBC's clients concluded that customers react favorably to voice messaging campaigns, measured by increased participation in the promotion or increases in showing up for appointments by those who received the calls, and by a very low number of opt-out requests. These evaluations have indicated that voice mail messaging is very successful in increasing participation rates by some 20 to 40 percent in controlled tests using both test and control groups.

At the same time, VMBC's messages have, over the years, resulted in opt-out requests well less than one percent of the time. Typical opt-outs rates for VMBC's clients have averaged less than 2/100ths of one percent – yet prior to conducting their own tests and taking their own

measures many of clients were very skeptical of the technology. In VMBC's experience, until clients conduct their own tests, most do not believe that consumers will respond in such a positive manner. The key differential between the initial presumption and the reality is that the delivered messages were relevant to existing customers, and such messages are positively received. This results naturally from the inherent self-regulatory nature of the service -- only if the customer likes receiving the message will a positive result occur, and an undesirable message may result in a company-specific Do Not Call request. VMBC's clients have a strong self-regulatory incentive not to "overdo" it -- knowing that abusing a customer relationship is a sure route to losing a customer.

Voice mail messaging also can improve quality control of telemarketing messages. Because the messages are prerecorded and tested, customers can experience a call clarity and articulation equal to that of the best live representatives and further benefit from the messages having been carefully reviewed and scripted to insure quality control and disclosure compliance. No issues arise of garbled speech, rogue or tired representatives, or other inappropriate caller behavior.

Finally, voice mail messaging can allow smaller firms to compete with larger firms. Today, small businesses do not have the scale to employ offshore call centers to handle their appointment and event reminders, and domestic-based call centers tend to be too costly. With the proposed change, voice mail messaging would provide smaller firms with a low-cost alternative that would empower them to match, or even improve upon, the level of customer service provided by larger entities.

## **2. Businesses would benefit through increased customer retention and improved brand image**

Voice mail messaging has a proven track record of improving a business's customer retention and its brand image. A medical office that courteously informs its patient of the desirability of scheduling a follow-up appointment, or of a medication that needs to be refilled, or a business that informs its steady customers of an upcoming sales event generates goodwill that, in time, results in a stronger relationship between the business and its customer.

Customer surveys have also shown that customers who receive voice messages perceive the company that sends the message as providing a higher level of service. This positive perception helps to improve those business's brand image and tend to drive current and future sales.

## **3. Facilitating voice mail messaging would promote domestic jobs**

The proposed change likely would have a positive effect on American jobs in two ways -- both by increasing the retention of customer service jobs within the U.S. and by increasing the sales and productivity of both large and small domestic organizations. These benefits are achieved by the positive response of consumers to this new application of technology.

VMBC's client base has consistently demonstrated that the use of prerecorded messages can lead to the retention of customer service jobs within the U.S. Rather than having messages delivered by offshore live operators, VMBC's clients have used a combination of prerecorded messages and domestic customer service employees. They have found that this combination of technology and knowledgeable, well-trained employees can compete on a cost-effective basis with offshore call centers -- yet deliver a higher level of service. That is why 100 percent of VMBC's calling campaigns in which a call is connected to a live representative connect the customer to onshore representatives.

The increased productivity and sales of both large and small domestic organizations arises from the nature of the prerecorded messages. For example, experience has shown that messages (to take a common example) that remind persons of appointments or special events have proven to increase dramatically attendance at appointments and events – generally at a rate quantitative studies have shown is 20-40 percent higher than for persons who did not get the reminder. This enables the staff and professionals at both large and small organizations to stay productive as their customers attend appointments or events, rather than suffering the losses of productivity caused when customers simply do not show up. In addition, increased attendance usually corresponds with incremental sales, so not only are operations more efficient, but sales rise. This combination has a very strong positive impact on employment in the United States.

**B. Voice Mail Messaging To Consumers With Which The Sellers Have Established Business Relationships Protects Consumer Privacy**

Customer-focused voice mail messaging actually can enhance, as well as protect, consumer privacy. Indeed, VMBC is unaware of any complaints to FTC or FCC about such calls to customers with whom an established business relationship exists. VMBC itself has never been the subject of any regulatory enforcement inquiries or other actions.

The proposed amendment to the TSR is also protective of consumer privacy due to several features unique to voice mail messaging. First, it is common to deliver prerecorded messages in a manner such that neither live operators nor the service provider receives any personal information about the recipient.

Second, some types of campaigns may offer the consumer the opportunity to speak with a live representative. In those cases, it is very common for the consumer to be connected to an operator who is a domestic employee of the business on whose behalf the call is placed. Thus, no information about the consumer needs to be shared with an outside party (such as VMBC) or

an offshore call center. The cost savings of the integration of pre-recorded messages enables a seller or organization to utilize on-shore domestic operators thereby reducing the risk of disclosures offshore.

Furthermore, voice mail messaging technology allows sellers to choose from several different means of enabling consumers to express their choice to opt-out from future calls. In addition to the use of telephone numbers and optional access to live operators, voice messaging can use the touch-tone features of the recipients dial pad to signal, in an easy, non-confrontational manner, an opt-out election. Indeed, this interactive dial pad technique has a greater assurance of accuracy than opt-outs handled by live operators because it eliminates the possibility for human transcription error. This simple, non-confrontational, and highly accurate means of making and recording a company-specific do not call request is an example of technology promoting privacy. As discussed below, the Commission should allow sellers flexibility in choosing the particular technique appropriate for their calls.

Finally, the Commission should reject the fears of some that the proposed rule change may create a deluge of voice messages to American consumers. The calls that the amendment would allow are limited to customers with established business relationships, and live calls to those customers currently are permitted under the TSR. As noted above, such calls are customer-relationship, not “prospecting.” The best practices for such calls is to keep the customer relationship happy and non-abusive.

VMBC believes that a big increase in calls is unlikely; instead, many “non-sale” calls would probably convert from live representatives to the more cost-effective prerecorded voice messages. Therefore, the most noticeable change would be a shift to prerecorded messages and a concomitant reduction in the use of offshored live operator calls. While the change may increase

the number of calls to some extent, the more predominant effect is more likely to be a conversion of offshored, live operator calls to domestically-originated prerecorded calls.

**C. The *Notice* Correctly Observes That Voice Mail Messaging Does Not Implicate The Policy Concerns That Led To The Adoption Of The TSR's Call Abandonment Rule**

The FTC correctly concludes in the *Notice* that “using prerecorded messages to consumers with whom the seller has an established business relationship would enable a telemarketer to preclude completely some of the odious side effects of predictive dialers.” 69 *Fed. Reg.* at 67288. Those concerns were two-fold: “dead air” and “hang ups.” Neither concern arises with voice mail messaging calls.

First, voice mail messaging will reduce or eliminate “dead air.” With prerecorded messages, sellers have no incentive to attempt to maximize the productivity of a call center by having the recipient wait until a sales representative is available. The recording will come on, each time, without delay. Prerecorded voice mail messages can commence within two seconds, consistent with the current TSR requirement for avoiding “dead air.” In its *Notice*, the Commission asked whether the recordings could begin in less than two seconds. 69 *Fed. Reg.* at 67290. Although as a practical matter an interval of time must pass between the end of the greeting (whether a live answer or an answering machine) to enable the calling technology to determine which type of greeting is made, this is less than two seconds. In fact, VMBC uses technology that can begin to deliver the message in less than two seconds. And the clients (who, after all, are paying to contact the customer) have no reason for the message to be delayed.

Second, it is self-evident that voice mail messaging should eliminate “hang ups.” The call is not disconnected; instead, a message is delivered each time, consistently and reliably.

**D. The Proposed Amendment To The TSR Would Comply With The Congressional Directive To “Maximize Consistency” With The FCC’s Rule**

Congress has directed this Commission and the Federal Communications Commission to “maximize consistency” between this agency’s TSR and the FCC’s regulations implementing the Telephone Consumer Protection Act. The proposed amendment to the TSR would comply with that directive by resolving an inconsistency that both agencies have recognized.<sup>8</sup>

In this instance, the FCC rule allowing the use of prerecorded messages to residential customers with whom the seller has an established business relationship has been in effect for approximately a dozen years. Apparently few complaints have been made; indeed, VMBC is unaware of any. This history should reassure the FTC that repealing the effective prohibition of interstate voice mail messaging calls created by the TSR amendments in 2003 should not spawn a deluge of complaints.

Finally, Congress in the TCPA specifically granted the FCC jurisdiction over the predictive dialers used to make voice messaging calls. 47 U.S.C. §227(b)(2) (granting FCC authority to prescribe regulations to implement TCPA restrictions on the use of automated telephone equipment). The FCC’s regulation allowing the use of prerecorded messages to residents with established business relationships was promulgated pursuant to that grant of authority. In contrast, the FTC’s TSR reaches predictive dialers only indirectly through the call abandonment rules, where the basis of the Commission’s jurisdiction rests upon its consumer protection authority, not dialing technology. Accordingly, it would be appropriate for the Commission to follow the FCC’s approach to regulating the use of predictive dialers.

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<sup>8</sup> See FCC’s *Report on Regulatory Coordination* at 9; FTC *Report to Congress Pursuant to the Do Not Call Implementation Act on Regulatory Coordination* (at ¶ 24).

**E. The Commission Should Clarify Its Proposal To Give Telemarketers Flexibility Regarding The Opt-Out Option**

The Commission has proposed to require that the prerecorded message must, within two seconds of a completed greeting: “promptly play[] a prerecorded message that: (A) presents an opportunity to assert an entity-specific Do Not Call request pursuant to §310.4(b)(2)(iii)(A) at the outset of the message with only the prompt disclosures required by §310.4(d) or (e) preceding such opportunity.” 69 *Fed. Reg.* at 67294. The disclosures required by subsection 310.4(d) are, in the case of a for-profit caller, the identity of the caller and the purpose of the call; subsection (e) requires analogous disclosures for a non-profit call. While not opposing this requirement,<sup>9</sup> VMBC urges the Commission to allow voice messagers flexibility in complying.

**1. The Commission should allow flexibility in providing the notification**

VMBC agrees that any such opt-out notification should, as the *Notice* proposes, follow identification and statement of purpose of the call. This will allow recipients of the calls an opportunity to understand who is calling and the nature of the call. Requiring an opt-out notification before consumers are made aware of the purpose of the call would make little sense. Indeed, it is difficult to understand how a consumer could have sufficient information to make an informed decision before the consumer has been advised of the identity of the caller and the purpose of the call.

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<sup>9</sup> VMBC notes that this affirmative obligation to advise recipients of their right to opt-out on a company-specific basis is not required of live operator calls, and therefore would impose a greater burden on prerecorded messages than live operators. Why this additional obligation should be borne only by less-intrusive prerecorded messages, and not live calls, is not clear. If anything, the intrinsic differences between prerecorded and live calls (the absence of a confrontational live sales representative) would seem to justify fewer regulatory obligations.



**2. The Commission should allow voice messengers flexibility in providing consumers with the means of opting-out**

The text of the proposed rule appropriately does not prescribe any particular method by which the consumer is to register a company-specific Do Not Call request. Instead, it would establish a duty on the part of voice messengers to provide a means of doing so. Not prescribing a particular method would allow telemarketers and the sellers reasonable flexibility in determining the most suitable way in which to comply. This is consistent with Section 310.4(d) of the current TSR. That is, the current rule sets a performance criterion that telemarketers must satisfy, while leaving the details to the telemarketer rather than forcing all calls into a pre-set, rigid formula.

This flexibility enables voice mail users to use the system that works best in their situations. While many sellers are willing to incur the additional cost of a live representative on hand to receive such calls, others would prefer a less costly means. And each method has its own characteristics. Today, interactive technology using touch-tone allows for more accurate transcription of a Do Not Call request, but consumers may be less familiar with pushing numbers. Dialing an telephone number can be accurate, but needs pen and pencil. A live operator is direct, but may introduce human error as well as pose more risk of a confrontation.

Finally, the Commission invited comment on whether sellers should be required to obtain prior consent to prerecorded calls. VMBC strongly opposes such a requirement as extremely burdensome. The cost of obtaining such permissions would greatly exceed the annual cost of delivering carefully targeted relevant messages, and would for all intents and purposes foreclose voice mail messaging as a viable option. Unfortunately, if such a requirement were imposed, the biggest burden would fall on smaller firms that would lack the time and resources necessary to obtain the required consents.

### **III. VMBC SUPPORTS DMA’S REQUEST FOR MODIFICATION OF THE MANNER IN WHICH THREE PERCENT CALL ABANDONMENT IS CALCULATED**

As noted above, Congress has directed this Commission and the Federal Communications Commission to “maximize consistency” between this agency’s TSR and the FCC’s regulations implementing the Telephone Consumer Protection Act. DMA’s proposal to modify the TSR to measure the three percent call-abandonment over a period of 30 days, as under the FCC rules, would rectify an inconsistency between the two rules. This inconsistency, as the FCC has observed, makes “compliance potentially confusing for those telemarketers that are under the jurisdiction of both agencies.”<sup>10</sup>

While this change would not affect VMBC’s voice mail messaging business, which leaves recordings, VMBC supports conforming the TSR to the FCC’s broader TCPA regulations, especially where doing so should ease the burdens on smaller businesses. Conforming the TSR to the FCC’s TCPA rule would have no noticeable effect on consumers, but would have immense practical benefit to businesses, particularly small business, that struggle to achieve the three percent figure on a per day, per campaign basis.

Given that under either test the abandonment rate cannot exceed three percent, the likelihood that consumers (especially any particular consumer) would receive more abandoned calls under the FCC rule would seem remote. The real problem is that since the rate of abandoned calls is a statistical phenomenon, when the rate is measured over a small list (as necessarily must occur if rates are measured on a daily per campaign basis, rather than over 30 days), the standard deviation will tend always to be greater than when the measure is over a larger number of calls. In turn, this makes compliance more difficult, and increases (not

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<sup>10</sup> See FCC’s *Report on Regulatory Coordination* at 9.

decreases) the possibility of more abrupt changes in predictive dialing rates as telemarketers strive to achieve no worse than 3 percent abandonment.

Because of the standard deviation issue for smaller lists, the sellers that would seem to have the most difficulty in complying with the current TSR standard would be those sellers whose lists tend to be smaller. In general, these are the smaller companies. Modifying the TSR to conform to the TCPA regulations should produce a significant practical benefit to small businesses, in particular, while ameliorating a burden that entities subject only to the FCC regulations do not face.

#### **IV. CONCLUSION**

For the foregoing reasons, Voice Mail Broadcasting Corporation respectfully urges the Commission to modify the Telemarketing Sales Rule to permit voice mail messaging calls on an interstate basis, as proposed in the *Notice*, and to give favorable consideration to the Direct Marketing Association's request that the Commission conform the measurement of abandoned calls to the regulations previously adopted by the Federal Communications Commission.

Respectfully submitted,

VOICE MAIL BROADCASTING  
CORPORATION

A handwritten signature in cursive script, reading "William B. Baker".

William B. Baker

John F. Kamp

WILEY REIN & FIELDING, LLP

1776 K Street, N.W.

Washington, D.C. 20006

(202) 719-7255

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*The World Leader In Voice Mail Broadcasting™*

## **ATTACHMENT A**

### **Interactive Voice Message Demonstrations**

**Easy-to-opt-out  
Verbal Invitations and Reminders  
that consumers want to hear.**

## Experience the ease of Opting-Out of Interactive Voice Messages

The following document and telephone simulations will help enable you to understand and experience typical messages that are being used by VMBC when delivering relevant information in a timely basis to the existing customers. This is essentially the system that the FTC proposes that all senders of these messages use at the conclusion of this rulemaking.

These messages are examples of the two most common applications of pre-recorded messages – event/ offer invitations and appointment reminders. For each of the two message applications you are provided three messages examples:

1. AMD Message - A message that would be delivered to a voice mail or answering machine device.
2. Outbound Interactive - An interactive message that would be delivered if a person answered the phone.
3. Inbound Interactive - An interactive message that the person would experience if they called the provided opt-out number or caller ID.

You are able to experience all three examples for each of the two applications by calling one of six toll-free numbers. For the four examples that are indicative of an outbound call you will hear an introduction message that would not be a part of the actual message that would be conveyed with an outbound call. The introduction message is provided to clarify the type of call. In the following pages the message text of the recordings is provided with the introductions indicated separately.

For each message, simply call the toll-free number to experience the message as if you were called. Messages automatically play upon connection, just as if a business for which you were an important customer was calling you. Answering machines and voicemail enable our clients to deliver the message when the customer is ready to hear it. Thus, our clients call during the day where the chance of reaching answering machines is highest. Except for business to business calls, we do not make calls such as these during the dinner hours.

## **Why is it Key to Listen to Sample Messages to Help Understand Why the FTC Rule Benefits Consumers?**

Listening to how typical messages are conveyed is a powerful way to understand how consumers will benefit from the proposed changes to the FTC's Telemarketing Sales Rule. The proposed rule change entails certain provisions that will pass on the best practices that VMBC follows to other providers. The rule change will require that the entities who utilize the pre-recorded messages include the ability for the message recipient to easily opt-out. Thus, the easy opt-out practices which are already being used by our clients would be further spread to all providers, thus benefiting consumers by enabling them to easily opt-out of messages they do not want to hear. This would provide even further self-governing control by reducing the number of unwanted calls.

With the addition of the easy opt-out provisions that the FTC has proposed, consumers will find it easier to opt-out – even more so than with a live representative. As a result, companies that utilize pre-recorded messages according to the new rules will be forced to reduce the amount of unwanted messages for two reasons:

1. To maintain a low opt-out rate, or
2. Fewer customers will be called due to opt out requests

Thus, the provisions for the opt-out mechanism will bring additional pre-recorded message users in line with VMBC's best practices and the consumer will experience fewer unwanted calls.

## **How Might Pre-Recorded Messages Benefit Consumer Privacy?**

The most common utilization of this service is to have the technology deliver the messages during the day to consumers who either receive the message immediately or retrieve it off of their answering machine. When a consumer has an interest and desires to speak to a representative for more information they are either transferred to or can call a toll-free number to reach our client's representative. For 100% of our clients, inbound calls are handled by on-shore client employees. When VMBC delivers a campaign on behalf of a client, typically no information other than a phone number and the related message to be delivered is transferred to our 100% US-based call center network. Thus, our clients can maintain all consumer information within their organization.

## **Why Not Outsource these Calls to Low-Cost Offshore Call Centers?**

The most common alternative for these consumer-centric messages is off-shore call centers who utilize live representatives to deliver the messages for a similar cost. Our clients have found that they are better able to serve their customers by utilizing on-shore employee representatives who have our technology and, in addition, it provides more jobs in the USA. The continued increase in the productivity of the US labor market is the foundation of the US standard of living. Technological advances such as those delivered through our technology allow US call center representatives to be paid a good wage while delivering a higher level of service than can be achieved by an offshore call center. Our clients have found success in this model and 100% of our calls are transferred to US-based call center representatives. The combination is a powerful job creation tool.

In addition to creating jobs and reducing the number of unwanted calls, the new FTC provisions will result in better customer service and higher quality communications. The provisions will require companies to include easy opt-out methods to ensure that companies only send messages that consumers want to hear, will enable large organizations to increase the productivity of their US-based representatives, keep jobs on-shore and create demand to bring jobs back from offshore. The key benefits of the new rule include:

- **Fewer Unwanted Calls**
  - Easy opt-out motivates companies to only deliver desirable messages.
  - Easy opt-out results in a smaller call base if undesirable messages are delivered.
- **Reduction / Reversal of Off-Shore Call Center Job Flow.**
  - Technology enables US-based representatives to be more competitive to off-shore call centers.
  - Combination improves quality for consumers over off-shore call center.
  - Past history includes 100% on-shore combination.
- **Less Privacy Exposure**
  - No customer identification information is conveyed.
  - 100% of our Call Center Network is US-Based.
- **Improvements in Consumer Experience**
  - Fewer dinner hour calls.
  - More concise messages with better and more consistent articulation.
  - No rebuttals or pressure and no risk of a rude agent.
  - No need for called party to “reject” a live call center representative.

These are many of the benefits to consumers that are often overlooked when pre-recorded calls are evaluated outside of the pre-existing business relationship. The proposed FTC rule would mandate that pre-recorded calls under an existing business relationship will be relevant to consumers by requiring an easy opt-out. Remember, the proposed rule would not change the treatment of pre-recorded solicitation calls outside the pre-existing relationship that are already prohibited. To fully understand the benefit to consumers and organizations one must analyze calls under the pre-existing relationship separately from those that are not under a pre-existing

relationship. As is very easy to imagine, each new client we have obtained has put the idea under great scrutiny and has had to determine themselves that the consumers like the calls and desire them. The proposed FTC rule will insure that these consumers will continue to benefit from these desired calls.

### **Why Do Top Organizations Use this for Communicating with Their Best Customers?**

Businesses know that their current customers are among their most important assets. Thus, during the initial evaluation of VMBC's services, our clients put our offering through a high level of scrutiny to ensure that our services will result in a positive customer experience. Typically they have been doubtful at first, but have become very positive after investigating the actual applications and experiencing actual messages. After further testing and measurement they have become convinced that the channel is a valuable component for customer-centric communication.

The two most common quantitative factors that are evaluated by these organizations are the positive action rate (increase in participation / reduction in missed appointments) and opt-out rates. The positive action rates are significant – 20-40% is a common range in controlled tests utilizing test and control groups. The opt-out rates are carefully measured and over millions of calls are shown to average significantly less than 1%. For example, one client's analysis of the results of 5.8 million messages over an 18 month period resulted in event participation increasing by 29%. This was complemented by 1,125 opt-outs – less than 2/100ths of 1%. Thus, even if you took a very skeptical assumption that only one in fifty persons who did not care for the message opted out (the ease of opting-out makes this a high assumption), still less than 1% of the 5.8 million did not care for the message. This is conclusive support that the application of relevant messages is highly desirable and considered a benefit by consumers.

### **With this Additional Information is it Reasonable to Support the FTC's Proposed Rule Change?**

Yes it is. The initial doubt about this technological solution for consumers was shared by most of the supporters of the solution prior to their studying actual consumer reaction. The education process provides conclusive support that this solution is desired by consumers and customer relation communication professionals alike. To shift support upon careful scrutiny of the proposed rule change by the FTC is consistent with protection of consumer's privacy and prevention of unwanted intrusions. This is an opportunity for industry and privacy advocates to mutually support a technological solution that will benefit all parties.



## **Message #1 - Outbound Answering Machine - Reminder Message**

This message is typical for a reminder. This message would be delivered during the day to an answering machine or voice mail in the event that no one answered the phone and it was picked up by the message device.

The underscored text that follows is an introduction that clarifies that the message normally would be heard when retrieved from an answering machine. In an actual message, only the *italic text* would be delivered.

To listen to the sample call toll-free: 1- (800) 668-9209

### User Introduction Message

You are about to listen to a sample event reminder message left on an answering machine or voice mail. For more information, please visit us at [www.VMBC.com](http://www.VMBC.com).

### User Introduction Message

*Hi. This is Kristin calling from the Salon. I just wanted to remind you that you have an appointment tomorrow, at our Laguna Beach location. If for some reason you can not make your appointment, or **if you would like to be placed on our company specific do not call list please call us at 800-682-0396**. Thank you and have a great day. Bye Bye.*

To imitate the ability for a person retrieving off a voice mail or answering machine to repeat the message we have included the following after the message is played:

*If you would like to repeat this message again please press 1, to end this call simply hang up.*

**Bold area of message is where call recipient can be placed on company-specific Do Not Call list.**

## Message #2 - Outbound Message Live Answer - Reminder Message

This message is typical for a reminder. This message would be delivered during the day in the event that the phone is picked up by a live person.

The underscored text that follows is an introduction that clarifies that the message normally be heard by a live person. In an actual message, only the *italic text* would be delivered.

To listen to the sample call toll-free: 1- (800) 679-6801

### User Introduction Message

You are about to listen to a sample of a typical event reminder message played to a live person who answered the call. For more information, please visit us at [www.VMBC.com](http://www.VMBC.com) . Ring. Hello.

### Actual Message Delivered To Live Person

*Hi. This is Kristin calling from the Salon. I just wanted to remind you that you have an appointment tomorrow, at our Laguna Beach location. If for some reason you can not make your appointment, please call us at 1-800-682-0396. **If at any time during this call you would like to speak to a customer service representative, please press 0. To confirm your appointment, please press 1. If you would like to be placed on our company specific do not call list, please press 2.** If you would like to repeat the message, please press 3. If you would like to contact the salon at a later time for more information **or to be placed on our company specific do not call list or if you don't have a touch tone phone, you can call us at 1-800-682-0396.** To repeat this menu, please press 4.*

If a person presses "0", they hear:

*Please hold while we transfer your call. Please be advised that the phone number you have called is for demonstration use only. If this was an active campaign at this point your call would be transferred to a representative. Thank you.*

If a person presses "1", they hear:

*Thank you. You are confirmed for your appointment. If you need further information please press 1 to talk to a customer service representative. Thank you and have a great day. Bye Bye.*

If a person presses "2", they hear:

*You number - Demonstration number 123-456-7890 - has been placed on our company specific do not call list. Thank you.*

If a person presses "3", they hear:

*Hi. This is Kristin calling from the Salon. I just wanted to remind you that you have an appointment tomorrow, at our Laguna Beach location. If for some reason you can not make your appointment, please call us at 1-800-682-0396.*

If a person presses "4", they hear:

***If at any time during this call you would like to speak to a customer service representative, please press 0. To confirm your appointment, please press 1. If you would like to be placed on our company specific do not call list, please press 2.** If you would like to repeat the message, please press 3. If you would like to contact the salon at a later time for more information **or to be placed on our company specific do not call list or if you don't have a touch tone phone, you can call us at 1-800-682-0396.** To repeat this menu, please press 4.*

**Bold area of message is where call recipient can be placed on company-specific Do Not Call list.**

### **Message #3 - Inbound Toll Free Line – Customer Experience When Responding To A Reminder Message**

This is what callers would typically experience when they call a toll-free number left with a reminder message.

Only the underscored text is delivered when you call.

To listen to the sample call toll-free: 1- (800) 682-0396

Actual Customer Experience On Toll Free Line

"Thank you for calling the Salon. **If at any time during this call you would like to speak to a customer service representative, please press 0. If you would like to be placed on our company specific do not call list, please press 1. If you don't have a touch tone phone please stay on the line and a customer service representative will be right with you.** To repeat this menu, please press 2.

If a person presses "0", they hear:

*Please hold while we transfer your call. Please be advised that the phone number you have called is for demonstration use only. If this was an active campaign at this point your call would be transferred to a representative. Thank you.*

If a person presses "1", they hear:

*Please enter the 10 digit phone number you would like placed on our company specific do not call list.*

If a person enters their 10-digit phone number, they hear:

*If this number is correct please press the # key, if this number is incorrect please press 2.*

If a person presses "#", they hear:

*You number has been placed on our company specific do not call list. Thank you.*

If a person presses "2" after number is repeated back, they hear:

*Please enter a 10 digit phone number now.*

***Bold area of message is where call recipient can be placed on company-specific Do Not Call list.***

#### **Message #4 - Outbound Answering Machine - Event or Offer Invitation Message**

This message is typical for an event or offer invitation. This message would be delivered during the day to an answering machine or voice mail in the event that no one answered the phone and it was picked up by the message device.

The underscored text that follows is an introduction that clarifies that the message normally would be heard when retrieved from an answering machine. In an actual message, only the *italic text* would be delivered.

To listen to the sample call toll-free: 1- (800) 651-6037

##### **User Introduction Message**

You are about to listen to a typical retail message left on an answering machine or voice mail. By pressing "1" on the keypad after the message, the recording can be heard again. For more information, please visit us at [www.VMBC.com](http://www.VMBC.com).

##### **Actual Answering Machine/Voice Mail Message**

*Hi this is Megan calling from your LA Store. We're having a 3-Day Sale exclusively for LA store Loyalty Club Members that runs this Friday, August 6th, thru Sunday, August 8th. – and if you use your Loyalty Club card you can save an extra 20% on all your purchases. **If you would like to be placed on our company specific do not call list please call us at 1-800-653-2062.** We hope to see you at this LA Store Event. Bye Bye.*

To imitate the ability for a person retrieving off a voice mail or answering machine to repeat the message we have included the following after the message is played:

*If you would like to repeat this message again please press 1, to end this call simply hang up.*

The offer to be placed on the company specific do-not-call list is within 15 seconds. The total message length is 25 seconds.

**Bold area of message is where call recipient can be placed on company-specific Do Not Call list.**

## **Message #5 - Outbound Message Live Answer - Event or Offer Invitation Message**

This message is typical for an event or offer invitation. This message would be delivered during the day in the event that the phone is picked up by a live person.

The underscored text that follows is an introduction that clarifies that the message normally be heard by a live person. In an actual message, only the *italic text* would be delivered.

To listen to the sample call toll-free: 1- (800) 654-0159

### **User Introduction Message**

You are about to listen to a typical retail industry message played to a live person who answered the call. The person who answers the call can press numbers on the keypad to talk to a company representative, repeat the message or have their number placed on a company specific Do Not Call list. For more information, please visit us at [www.VMBC.com](http://www.VMBC.com). Ring. Hello.

### **Actual Message Delivered To Live Person**

*Hi. This is Megan calling from your LA Store. We're having a 3 Day Sale exclusively for LA store Loyalty Club Members that runs this Friday, August 6th, thru Sunday, August 8<sup>th</sup> and if you use your Loyalty Club card you can save an extra 20% on all your purchases. **If at any time during this call you would like to speak to a customer service representative, please press 0. If you would like to be placed on our company specific do not call list, please press 1.** If you would like to repeat the message, please press 2. If you would like to contact LA store at a later time for more information **or to be placed on our company specific do not call list you can call us at 1-800-653-2062.** To repeat this menu, please press 3. **If you don't have a touchtone phone please stay on the line and a customer service representative will be right with you.***

If a person presses "0", they hear:

*Please hold while we transfer your call. Please be advised that the phone number you have called is for demonstration use only. If this was an active campaign at this point your call would be transferred to a representative. Thank you.*

If a person presses "1", they hear:

*You number - Demonstration number 123-456-7890 - has been placed on our company specific do not call list. Thank you.*

If a person presses "2", they hear:

*Hi. This is Megan calling from your LA Store. We are having a 3 Day Sale exclusively for LA store Loyalty Club Members that runs this Friday, August 6th, thru Sunday, August 8th. Where if you use your Loyalty Club card you can save an extra 20% on all your purchases...*

If a person presses "3", they hear:

***If at any time during this call you would like to speak to a customer service representative, please press 0. If you would like to be placed on our company specific do not call list, please press 1.** If you would like to repeat the message, please press 2. If you would like to contact LA store at a later time for more information **or to be placed on our company specific do not call list you can call us at 1-800-653-2062.** To repeat this menu, please press 3.*

**Bold area of message is where call recipient can be placed on company-specific Do Not Call list.**

## **Message #6 - Inbound Toll Free Line – Customer Experience When Responding To Event Or Invitation Message**

This is what callers would typically experience when they call a toll-free number left with an event or invitation message.

Only the *italic text* is delivered when you call.

To listen to the sample call toll-free: 1- (800) 653-2062

Actual Customer Experience On Toll Free Line

*Thank you for calling the LA Store. **If at any time during this call you would like to speak to a customer service representative, please press 0. If you would like to be placed on our company specific do not call list, please press 1. To repeat this menu, please press 2. If you don't have a touch tone phone please stay on the line and customer service representative will be right with you.***

If a person presses "0", they hear:

*Please hold while we transfer your call. Please be advised that the phone number you have called is for demonstration use only. If this was an active campaign at this point your call would be transferred to a representative. Thank you.*

If a person presses "1", they hear:

*Please press the # key if you are calling from the number you would like placed on our company specific do not call list or enter the ten-digit number you would like added.*

If a person presses "#", they hear:

*(Number placed repeated back) If this number is correct please press the # key, if this number is incorrect please press 2.*

If a person presses "#" after number is repeated back, they hear:

*You number has been placed on our company specific do not call list. Thank you.*

If a person presses "2" after number is repeated back, they hear:

*Please enter a 10 digit phone number now.*

***Bold area of message is where call recipient can be placed on company-specific Do Not Call list.***